



Federal Communications Commission
Washington, D.C. 20554

July 27, 2016

Mr. Albert Gencarella
President
Stratophone, LLC
67 Green Meadow Blvd.
Middletown, New Jersey 07748

Mr. Michael R. Carper
Sr. VP Corporate Development
SkyTel Spectrum, LLC
70 Wood Avenue South
Iselin, New Jersey 08830

RE: Joint Request by Stratophone, LLC and SkyTel Spectrum, LLC, for Modification of Order Granting Limited Waivers of Certain Air-to-Ground Radiotelephone Service Licensing Rules for General Aviation

Dear Messrs. Gencarella and Carper:

This letter ("Letter Decision") responds to a request jointly filed by Stratophone, LLC ("Stratophone") and SkyTel Spectrum, LLC ("SkyTel," and collectively with Stratophone, the "Parties") that we modify portions of the July 2, 2010 Order that waived certain Part 22 General Aviation Air-Ground Radiotelephone Service rules.¹ The Parties premise their Request on delays and issues stemming from U.S.-Canada negotiations regarding use of 400 MHz general aviation air-ground channels² for operations near the U.S.-Canada border. They argue that these circumstances, which delayed the processing of their applications as filed after the *2010 Order's* release (the "Pending Applications"), were unforeseen and beyond their control, and that granting their Request serves the public interest. We grant the Waiver Modification Request to the extent described herein.

¹ Request for Modification of Waiver of Stratophone, LLC and SkyTel Spectrum, LLC, WT Docket No. 09-44, dated February 4, 2015 ("Waiver Modification Request" or "Request"). See KCC793, ULS File No. 0004552869 (attachment filed Feb. 4, 2015). The Request seeks modification of Joint Request by Stratophone, LLC and SkyTel Spectrum, LLC for Waiver of Certain Air-to-Ground Radiotelephone Service Licensing Rules for General Aviation, *Order*, WT Docket No. 09-44, 25 FCC Rcd 8581 (WTB MD 2010) ("*2010 Order*") (waiving, with specified limitations and conditions, 47 C.F.R. §§ 22.813, 22.815, and 22.817).

² See 47 C.F.R. § 22.805 (setting forth the channels allocated in the United States for general aviation air-ground service).

BACKGROUND

In 2010, the Mobility Division (“Division”) granted relief to the Parties enabling them to upgrade their outdated AGRAS-based³ facilities and to fill in their existing networks. In the *2010 Order*, the Division waived Section 22.817’s one-channel-at-a-time requirement and six-channel cap; it also waived the distance separation requirement of Section 22.813(a) and the channel dispersion requirement of Section 22.813(b).⁴ In addition, the Division waived the one-year build-out requirement under Section 22.815 and extended the deadline to two years for applications submitted within a specified six-month window.⁵ No one had opposed the Parties’ 2009 waiver request,⁶ and no one sought reconsideration of the *2010 Order*.

After the Parties filed the Pending Applications as part of the planned upgrade of their respective facilities, Canada raised concerns about air-ground operations near the U.S.-Canada border and the potential for interference to certain Canadian land mobile operations that are using the affected 400 MHz spectrum. In light of these concerns, negotiations of an arrangement between the United States and Canada governing shared use of the 400 MHz air-ground spectrum near the U.S.-Canada border were initiated and remain ongoing. On August 20, 2013, a Statement of Intent (“SOI”) was signed setting forth interim terms and conditions under which frequencies in the band may continue to be used or newly authorized until an arrangement is finalized for general aviation air-ground (and/or other use) in a designated “Sharing Zone” that straddles both sides of the U.S.-Canada border.⁷ Throughout the Sharing Zone, licensees are restricted under the SOI to six communications channel pairs assigned for their respective country’s primary use.⁸

The Division has held the Pending Applications in abeyance during the U.S.-Canada negotiations as the applications could not be processed until the frequencies for primary U.S. use were determined. However, by the time the SOI was signed, the January 2, 2013, construction deadline specified in the *2010 Order* had already passed. Consequently, the Parties’ plan to transition to a modernized, nationwide

³ The term “Air-Ground Radiotelephone Automated Service” or “AGRAS” has long been used by the industry to describe the standardized duplex analog technology originally employed to provide telephone service to general aviation subscribers flying over the United States or Canada. *See, e.g.*, Nathan J. Muller, Desktop Encyclopedia of Telecommunications 15-17 (3d ed. 2002). We understand that the Parties’ planned upgraded network will rely on modern digital technology rather than AGRAS.

⁴ *2010 Order*, 25 FCC Rcd at 8587-91.

⁵ *Id.*, 25 FCC Rcd at 8589-90. The parties were required to submit all applications associated with the 2009 waiver request within six months of the *2010 Order*’s release date (*i.e.*, by January 2, 2011).

⁶ Waiver Request of Stratophone, LLC and SkyTel Spectrum, LLC, filed Feb. 24, 2009.

⁷ “Statement of Intent of the Federal Communications Commission of the United States of America and the Department of Industry of Canada Related to the Sharing and Use of the Frequency Bands 454.6625-454.9875 and 459.6625-459.9875 MHz for Mobile and Fixed Services Along the United States-Canada Border,” signed August 20, 2013, by Mignon L. Clyburn, Acting Chairwoman, FCC, and Kelly Gillis, Senior Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Industry Canada (currently Innovation, Science and Economic Development Canada).

⁸ *See id.* The Sharing Zone is divided into four segments, each defined in terms of geographic coordinates and specified distances from the U.S.-Canada border on both sides. Modifications to the listed licensed operations (*see id.*, Appendices 2 and 3) and new authorizations are to be consistent with the provisions in the SOI.

air-ground radiotelephone service network could not be implemented pursuant to relief specified in the *2010 Order*.

The Parties note that, because many frequencies requested in the Pending Applications have now been designated for Canada's primary use, they must amend such Applications to substitute frequencies designated for U.S. primary use.⁹ In addition, because their currently authorized licenses ("Existing Licenses") include some with frequencies now designated in the SOI for Canada's primary use, the Parties argue that the affected licenses must be modified to substitute channels designated for U.S. primary use.¹⁰ They further argue that the reduction in channels allocated for U.S. primary use "necessitates additional sites and channels to maintain system capacity" both within and outside the Sharing Zone.¹¹

The Parties therefore ask that we reset the timetables and make other modifications to the waiver relief granted in the *2010 Order* to account for these changes in circumstance.¹² Noting that the Commission already determined that it would serve the public interest to grant their original request for waiver relief, they assert that their requested modifications are essential to enable them to implement that relief.¹³

DISCUSSION

We previously found that the Parties satisfied the requirements under Section 1.925 of our rules for waiver relief to facilitate their transition to a modern, integrated, air-ground radiotelephone service network,¹⁴ only to have the relief delayed by negotiations with Canada. Until at least an interim arrangement was in place with Canada, the Division could not grant any of the Pending Applications. We continue to believe that the waiver relief is in the public interest, and that the delay as well as certain provisions of the SOI warrant a resetting of the original waiver timelines and revision of certain aspects of the original relief. Accordingly, we modify the waiver relief granted in 2010 to the extent described below.

Resetting of Filing Window

We find that, given the unusual circumstances presented here, it serves the public interest to reset the six-month application filing period to commence on the date of release of this Letter Decision, ending on January 27, 2017. This reset filing window will permit the Parties to submit amendments and new applications for certain channels and/or sites covered under the Pending Applications and Existing Licenses to reflect the newly designated U.S. channels within the Sharing Zone. It will also allow the Parties to account for lost system capacity by adding sites/channels both within and outside the Sharing Zone to the extent that sites and channels are available and in compliance with the SOI. During the reset six-month window – but not thereafter – the Parties may file amendments and new applications for more

⁹ See Waiver Modification Request at 3 (citing SOI ¶¶ 2.2, 3.3).

¹⁰ See *id.* at 1, 8-9.

¹¹ *Id.* at 3.

¹² See *id.* at 1-2, 4-5, and 7-8.

¹³ See *id.* at 7-8.

¹⁴ See generally *2010 Order*, 25 FCC Rcd 8581.

than one channel at a time¹⁵ and for more than six channels in a given area,¹⁶ consistent with our 2010 waiver of Section 22.817 to “leverage recent technological advances and make more effective use of the spectrum.”¹⁷

Substitution of Frequencies

Pending Applications. To allow the Parties to transition their systems efficiently to the upgraded network, all applications will be processed within the same timeframe. Channels originally requested in the Pending Applications that are designated under the SOI for U.S. primary use and do not need to be replaced will be processed at the same time we act on the amendments and new applications filed in the reset six-month window.

Our records show that 22 channels requested in the Pending Applications at a total of six sites are designated in the SOI for Canadian primary use in the Sharing Zone. For those channels, we find that it serves the public interest to permit the Parties to substitute U.S. designated frequencies on a one-for-one basis at those same sites. We note that under Section 1.929 of the Commission’s rules, amendments to pending applications that request a new frequency are major amendments.¹⁸ However, Section 1.925(b)(3)(ii) provides for waiver of the Commission’s rules where, for example, in view of unique or unusual factual circumstances, application of the rule would be inequitable,¹⁹ and under Section 1.925(a), the Commission may waive rule requirements on its own motion.²⁰ Here, the Division is precluded under the SOI from assigning channels now designated for Canadian primary use in the Sharing Zone. In light of these unusual circumstances arising from international negotiations, we grant on our own motion a waiver of Section 1.929 to treat the amendments to Pending Applications as minor to the extent they replace, on a one-for-one basis, Canadian channels with U.S. channels in the Sharing Zone.²¹

Existing Licenses. The SOI and the ongoing U.S.-Canadian negotiations of a final arrangement anticipate that licensees will be required to cease operating on channels designated for the other country’s use. Because, as noted above, some of the Parties’ Existing Licenses authorize them to operate on channels now designated for Canadian primary use at Sharing Zone sites, we find it appropriate to modify

¹⁵ As in the 2010 Order, see 25 FCC Rcd 8481, 8589 n.64, we will permit the Parties to file all channels for a particular site on a single application. The Parties will be required to pay the normal per-channel filing fee, notwithstanding the inclusion of multiple channels on a single application. We reiterate that general aviation air-ground licenses are authorized on a per-site and per-frequency basis, and each frequency and site must ultimately be licensed individually regardless of the methods used in the system’s design and implementation. *See id.*

¹⁶ Specifically, the Parties may apply for more than six channels at a time outside of the Sharing Zone. As noted, there are six channels available for U.S. primary use within the Sharing Zone.

¹⁷ 2010 Order, 25 FCC Rcd at 8588-89.

¹⁸ See 47 C.F.R. § 1.929(a)(6).

¹⁹ 47 C.F.R. § 1.925(b)(3)(ii).

²⁰ 47 C.F.R. § 1.925(a).

²¹ See, e.g., Applications of State of New Hampshire and McCormick & Jacobson, 14 FCC Rcd 3607, 3614-16 (WTB 1999) (waiving, on the Bureau’s own motion, Section 1.929 to classify amendments to pending applications for certain Part 22 authorizations as minor).

those particular licenses (the “Affected Licenses”).²² Under Section 316(a) of the Act, the Commission may modify licenses where it determines that the modification serves the public interest, convenience, and necessity,²³ and the U.S. Court of Appeals for the District of Columbia has upheld license modifications that involve relocating existing licensees to different spectrum.²⁴ We conclude that it serves the public interest to modify the Affected Licenses, effective as of the release date of this Letter Decision, pursuant to the Commission’s authority under Section 316(a) of the Act and consistent with Commission precedent.²⁵

These modifications are consensual. The Parties agree that modification of their respective Affected Licenses pursuant to Section 316(a) of the Act to substitute U.S. for Canadian channels at the affected sites in the Sharing Zone promotes the public interest,²⁶ and have waived their rights under Section 316(a)(1) of the Act²⁷ to protest such modifications.²⁸ While the purpose of the modifications in this case is to replace the currently authorized channels that are designated for Canadian primary use with channels designated for U.S. primary use, we recognize that the Parties need time to build and integrate the replacement U.S. channels into their new nationwide network and it would not serve the public interest to require them to discontinue service on any of their currently authorized channels immediately. Moreover, under the terms of the SOI, the Parties may continue to operate on currently authorized channels in the Sharing Zone even if designated for Canadian primary use, subject to the terms of a final U.S.-Canada arrangement. Under these circumstances, we find that it serves the public interest to modify the Affected Licenses by adding the replacement channels, effective with the release of this Letter Decision, and to provide a transition period during which the Parties will be authorized to construct the replacement frequencies at the sites of the Affected Licenses in the Sharing Zone.

In connection with the above-described modification under Section 316(a), we impose several conditions on the Parties, as follows: (1) they will not be permitted to operate simultaneously on the U.S. replacement frequencies and the currently authorized frequencies that are designated for Canadian primary use in the Sharing Zone, but instead will be required to cease operation on currently authorized frequencies once the replacement channels are put into operation; (2) they will be required to file notifications of timely construction for the replacement channels, and modification applications to delete the channels being replaced; and (3) the Parties must of course comply not only with the SOI, but with the final U.S.-Canada arrangement governing use of the relevant 400 MHz spectrum in the Sharing Zone.

²² The Affected Licenses are as follows: KCC793 and WPOL835 (Northborough, MA); KGC406 (Wexford, PA); KNKK614 (Orrington, ME); KNLV993 (Augusta, MN); KQD306 (Lavonia, MI); KQD611 (Flat Top, WV); KSC881 (Hoffman Estates, IL); KSJ612 (Huntingburg, IN); and KGC405 (Landover Hills, MD).

²³ 47 U.S.C. § 316(a).

²⁴ See *Rainbow Broadcasting v. FCC*, 949 F.2d 405, 410 (D.C. Cir. 1991) (cited in Waiver Modification Request at 8). See also *Peoples Broadcasting Co. v. United States*, 209 F.2d 286, 288 (D.C. Cir. 1953) (holding that license modifications pursuant to Section 316 of the Act need not be consensual).

²⁵ See Service Rules for the 698-746, 742-762 and 777-792 MHz Bands, *Second Report and Order*, WT Docket No. 06-150 *et al.*, 22 FCC Rcd 15289, 15337-38, 15481 (2007) (“700 MHz 2d R&O”).

²⁶ See Waiver Modification Request at 9.

²⁷ 47 U.S.C. § 316(a)(1).

²⁸ See Waiver Modification Request at 9 (citing 700 MHz 2d R&O, 22 FCC Rcd at 15341). The Waiver Modification Request was signed by officers of both Stratophone and SkyTel.

Our action today will facilitate implementation of a future arrangement that results from the ongoing U.S.-Canada negotiations with the least disruption possible to the Parties' existing operations.

Resetting of Extended Construction Period

We find that, in light of the delay caused by the U.S.-Canada negotiations, it also serves the public interest to reset the clock applicable to our limited waiver of Section 22.815, and to restart the construction period from the date of grant of the Parties' applications in order to allow the Parties to realize the full benefit of the waiver relief.²⁹ We also agree with the Parties' argument that a three-year construction deadline would be "more appropriate, based on the additional complexities in system design and deployment arising from the [SOI's Sharing Zone arrangement] that affects a large geographical portion of the United States and a very substantial percentage of its population."³⁰ As we recognized in the *2010 Order*, the Parties' project is ambitious in its scope and technical complexity, as they will be integrating their operations into an upgraded, more spectrally efficient nationwide telecommunications system and also transitioning current customers.³¹ The Sharing Zone arrangement only increases the complexity of this transition. Accordingly, we find that it serves the public interest to have a single, three-year construction and transition period apply to all channels included in the Pending Applications, amendments, new applications filed in the reset six-month filing window, and channels authorized under the Existing Licenses (including, as applicable, modifications).³²

Other Waiver Provisions

As with the case of Existing Licenses and Pending Applications covering frequencies that are already within the range of frequencies designated under the SOI for U.S. primary use (*i.e.*, channels that do not need to be replaced), the amendments and other filings submitted during the new six-month period will be subject to the terms and conditions of the already-granted limited waivers of subsection 22.813(a)'s distance separation requirement, subsection 22.813(b)'s channel dispersion requirement, and Section 22.817's channel limits.³³ We reiterate that the Parties' operations are subject to the terms of the SOI and will be subject to the U.S.-Canada arrangement once it is finalized governing use of the 400 MHz general aviation air-ground channels in the Sharing Zone.

The *2010 Order* limits the subsection 22.813(a) relief to Petitioners' own facilities.³⁴ They will continue to be subject to this limitation, which "ensures that the underlying purpose of the distance separation provision will continue to be served, protecting third-party licensees as well as operations in border areas, while providing [the Parties] with flexibility in locating channels in the new network."³⁵ In addition, while negotiations between the United States and Canada continue toward a final arrangement governing use of the band, applications by the Parties will need to ensure protection of Canadian licensees

²⁹ See *id.* at 5 n.12.

³⁰ *Id.* at 3.

³¹ See *2010 Order*, 25 FCC Rcd at 8589-90.

³² See Waiver Modification Request at 5.

³³ *2010 Order*, 25 FCC Rcd at 8590-92.

³⁴ *Id.*, 25 FCC Rcd at 8591.

³⁵ *Id.*

in accordance with the SOI's terms and conditions. The Commission will not consider applications that do not so comply. The Parties will be required to meet the normal construction and technical requirements under Part 22 of the Commission's rules (except as otherwise waived), but we also reiterate the condition of the 2010 waiver relief granted under subsection 22.813(b) regarding dynamic management of the Parties' nationwide system: "Petitioners will be required to construct a system that ensures monitoring of the network's facilities continuously, managed in such a way that the system can meet demand nationwide on general aviation aircraft."³⁶

ORDERING CLAUSES

Accordingly, IT IS ORDERED that the Joint Request by Stratophone, LLC and SkyTel Spectrum, LLC, for Modification of Order Granting Limited Waivers of Certain Air-to-Ground Radiotelephone Service Licensing Rules for General Aviation, dated February 4, 2015, is HEREBY GRANTED to the extent described herein.

IT IS FURTHER ORDERED, pursuant to Section 1.925, 47 C.F.R. § 1.925, that Section 1.929 of the Commission's rules, 47 C.F.R. § 1.929, is HEREBY WAIVED to the extent described herein.

IT IS FURTHER ORDERED, effective as of the date of release of this Letter Decision, that the following licenses individually held by Stratophone, LLC or SkyTel Spectrum, LLC, are modified pursuant to Section 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 316(a), to the extent and with the conditions described herein: KCC793 and WPOL835 (Northborough, MA); KGC406 (Wexford, PA); KNKK614 (Orrington, ME); KNLV993 (Augusta, MN); KQD306 (Lavonia, MI); KQD611 (Flat Top, WV); KSC881 (Hoffman Estates, IL); KSJ612 (Huntingburg, IN); and KGC405 (Landover Hills, MD).³⁷

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131 and 0.331.

Sincerely,



Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

cc: Doane F. Kiechel, Esq., Counsel for Stratophone, LLC
Liz Sachs, Esq., Counsel for SkyTel Spectrum, LLC

³⁶ *Id.*

³⁷ As noted above, each of the Parties has waived its rights under Section 316 of the Act to protest these modifications. *See* Waiver Modification Request at 9.